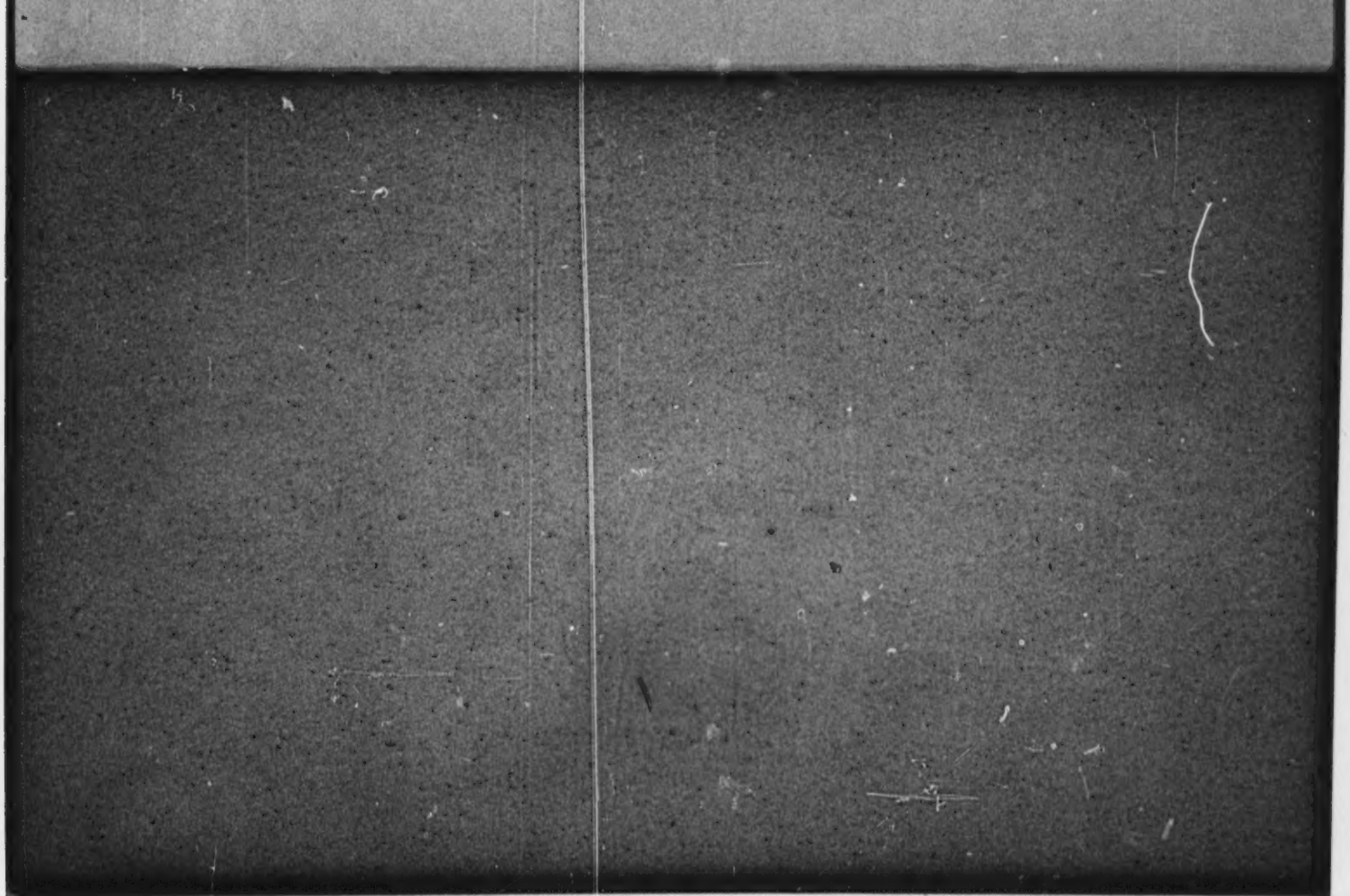

LIBRARY
SUPREME COURT, U. S

AUG 2 1974

MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-1821

WILLIE LEE GORDON, ET AL., C. J. HINES, McKINLEY MARZETTE, and MARCELLUS HODGE,
Petitioners,

v.

LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 612, ET AL., *Respondents.*

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

BRIEF IN OPPOSITION

ROBERT J. CONNERTON
ARTHUR M. SCHILLER
JULES BERNSTEIN
905 - 16th Street, N.W.
Washington, D. C. 20006

MAYNARD UNGERMAN
6th Floor, Wright Building
Tulsa, Oklahoma 74103

Counsel for Respondents

PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

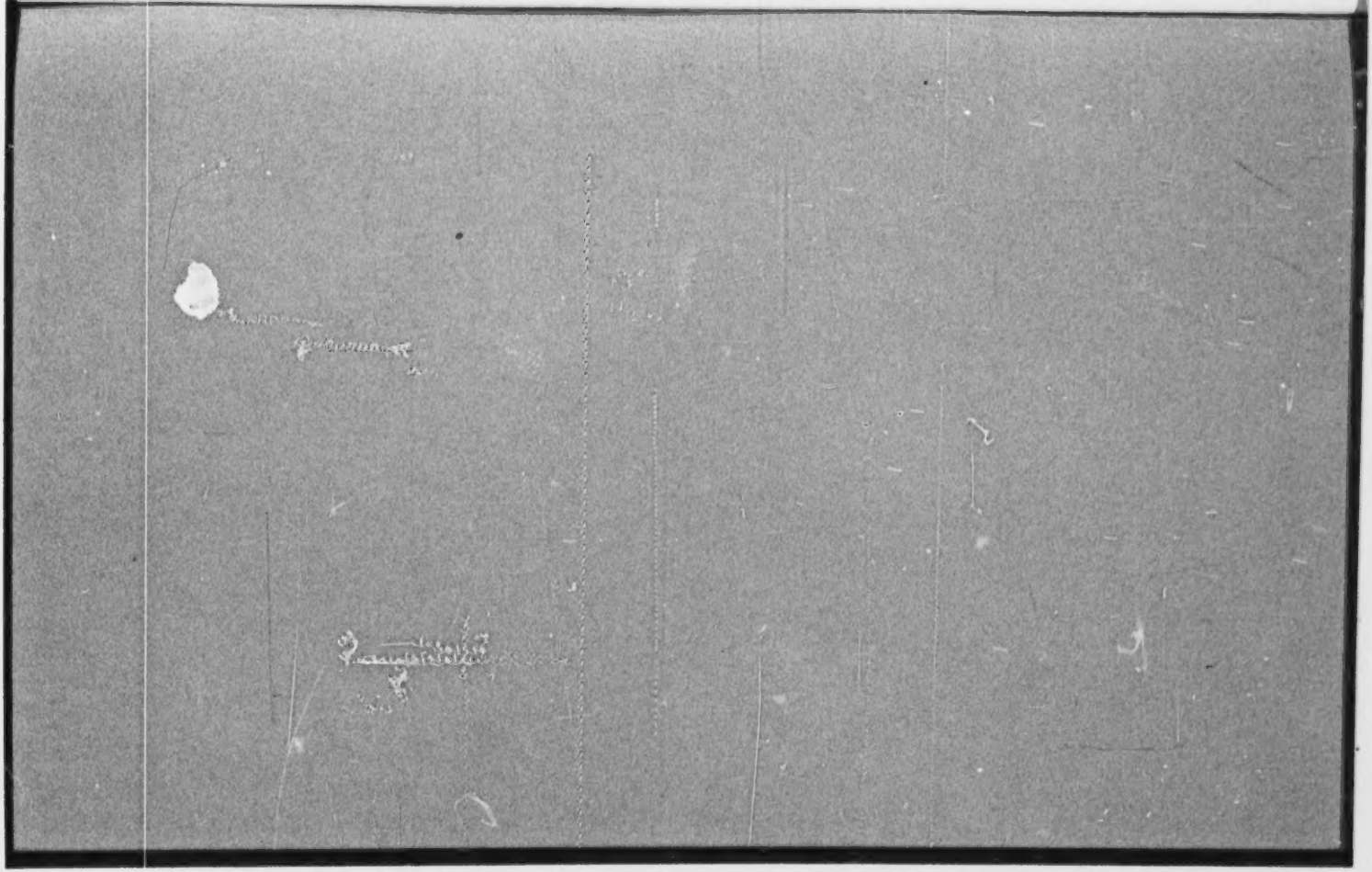

TABLE OF CONTENTS

	Page
OPINIONS BELOW	2
JURISDICTION	2
QUESTIONS PRESENTED	2
STATEMENT	2
1. Nature of the Case	2
2. The Course of Proceedings	3
ARGUMENT	6
CONCLUSION	10
CERTIFICATE OF SERVICE	11
APPENDIX A	1a
District Court Judgment of September 28, 1973	1a
Memorandum Opinion of District Court of September 28, 1973	2a

TABLE OF AUTHORITIES

CASES:

American Federation of Musicians v. *Wittstein*, 379 U.S. 171 ..... 6, 7

Parks v. *IBEW Local 23*, 314 F.2d 886, 906 (4th Cir.), *cert. den.*, 372 U.S. 976 10

STATUTES AND REGULATIONS:

Labor-Management Reporting and Disclosure Act of 1959,

Title I, Section 101 ..... 6, 7, 8

Title III, Section 302 ..... 7, 9

Title IV, Section 401 7

Page

OTHER AUTHORITIES:

Labor Department Regulations § 452.127, 8 Fed. Reg. 18338 ..... 7, 8

Memorandum for the United States as Amicus Curiae, *American Federation of Musicians* v. *Wittstein*, 379 U.S. 171 7

IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-1821

WILLIE LEE GORDON, ET AL., C. J. HINES, McKINLEY MARZETTE, and MARCELLUS HODGE, *Petitioners,*

v.

LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 612, ET AL., *Respondents.*

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

---

BRIEF IN OPPOSITION

OPINIONS BELOW

The opinion of the district court is reported at 351 F. Supp. 824. The opinion of the Tenth Circuit is reported at 490 F.2d 133. The opinion of the Temporary Emergency Court of Appeals, to which a portion of the district court's decision was appealed, is reported at 476 F.2d 1388.

An opinion and judgment rendered by the district court on September 28, 1973, on remand from the Temporary Emergency Court of Appeals is included

as Appendix A. An appeal from the latter opinion and judgment is presently pending in the Tenth Circuit, see *Associated General Contractors, Inc., Oklahoma Chapter—Builders Division, plaintiff-appellant,* v. *Laborers' International Union of North America, Local 612, et al., defendant-appellees,* Case No. 73-1899.

JURISDICTION

The jurisdictional requisites are adequately set forth in the Petition.

QUESTIONS PRESENTED

1. Whether the court of appeals correctly concluded that the imposition of trusteeship by respondent Laborers' International Union over its affiliated Local 612 did not violate the provisions of § 302 of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. § 462 (the "Act" hereinafter).

2. Whether the court of appeals correctly concluded that Article IV, § 3, of the Constitution of the Oklahoma Laborers' District Council, which establishes the basis for apportionment of district council delegates to its constituent local unions, does not violate the provisions of § 101(a)(1) of the Act, 29 U.S.C. § 411(a)(1).

STATEMENT

1. Nature of the Case

This is an appeal from a decision of the United States Court of Appeals for the Tenth Circuit rendered on November 21, 1973, denying claims contained in a complaint and cross-complaint filed by petitioners alleging (1) that by imposing trusteeship over its constituent Local 612, Oklahoma City, Okla-

homa, ("Local 612" hereinafter,) respondent Laborers' International Union of North America, AFL-CIO ("International" hereinafter) violated the provisions of §302 of the Act, and (2) that Article IV, § 3 of the Constitution of respondent Oklahoma Laborers' District Council ("Council" hereinafter,) apportioning delegates to the Council to its constituent local unions violates § 101(a)(1) of the Act.

2. The Course of Proceedings

The complaint herein was filed on October 20, 1970, by petitioners Gordon, et al., who are five members of Local 612, against the International, Council and petitioners C. J. Hines, Marcellus Hodge and J. S. Henderson, then Secretary-Treasurer, President and Business Manager, respectively, of Local 612.[1]

The gravamen of the complaint was that defendants were requiring Local 612 to participate in the Council in violation of § 101(a)(1) of the Act by denying it proportional representation therein. In their prayer for relief, plaintiffs sought an order authorizing Local 612 "to withdraw as a member of the Oklahoma District Council," or in the alternative, they sought an order providing Local 612 with "a sufficient number of delegates that would be fairly representative of its membership in proportion to the membership of the other eight locals in said Council."

An answer was filed on May 3, 1972, on behalf of Local 612 and its three named officers, in which the material allegations of the complaint were admitted.

---

[1] Henderson was succeeded by McKinley Marzette as Business Manager of Local 612 subsequent to the institution of suit. Accordingly, Marzette, rather than Henderson, is a petitioner herein.

The answer also contained a cross-complaint against the International alleging that on or about April 25, 1972, Local 612 had been placed in trusteeship by the International in violation of § 302 of the Act. Cross-complainants sought an injunction against the trusteeship.

On May 4, 1972, the plaintiffs amended their complaint to allege the invalidity of the trusteeship, and sought injunctive relief therefrom. On the same date, Local 612 and its three named officers moved for a preliminary injunction against the trusteeship.

On May 8 and 9, 1972, a hearing on the foregoing motions was conducted. At the conclusion of the hearing, the court indicated that it would issue a preliminary injunction against the trusteeship; and on May 16, 1972, the Court entered such preliminary injunction as well as accompanying findings of fact and conclusions of law.

On June 19, 1972, the matter came on for trial on complainant's prayers for permanent injunctive relief. A further hearing was conducted on July 17, 1972. At the July 17 hearing, the court requested Judge Charles Jones, Magistrate of the District Court, to conduct a special meeting of the members of Local 612 at which they would be asked to vote on whether they desired to be represented in collective bargaining by the Council in accordance with the Constitution of the International. Such a meeting was conducted by Judge Jones on August 21, 1972, at which the members voted 157-45 in favor of representation by the Council.

On September 29, 1972, a trial was conducted after the court consolidated the action with a subsequently filed suit brought by the Associated General Con-

tractors of America, Inc., Oklahoma Chapter—Builders Division ("AGC" hereinafter), seeking a declaration upholding the validity of a contract purportedly entered into between the AGC and Local 612 but challenged by the International.

On November 1, 1972, the district court rendered its opinion and judgment. Insofar as the trusteeship was concerned, the court dissolved the preliminary injunction entered on May 8, 1972, and restored the parties to their respective positions as of the date the preliminary injunction issued, thereby permitting the trusteeship to resume. The court concluded that the trusteeship had been imposed for reasons which were "well within the permissible purposes of § 302 of the Act . . . . ."

With regard to the apportionment issue, the court held that the "equal rights" provision of § 101(a)(1) of the Act did not require weighted voting in the Council. Finally, the court voided the purported contract, finding that it "was entered into by the parties subject to the condition subsequent that it be approved by the Laborers' National Craft Board and/or the Construction Industry Stabilization Committee" set up by the President under Executive Order 11588, and that this condition subsequent was not fulfilled.

Appeals were taken to both the Temporary Emergency Court of Appeals ("TECA" hereinafter,) and to the Tenth Circuit. The AGC appealed the question of the validity of the contract to TECA, which held, at 476 F.2d 1388, that the Craft Board and the Construction Industry Stabilization Committee lacked power to reject the contract. However, TECA remanded the case to the district court for further proceedings, since none of the government agencies involved had as yet become parties to the case.

Petitioners herein appealed to the Tenth Circuit from the district court's decision regarding the validity of the trusteeship, and the apportionment of Council delegates. By decision and order rendered on November 21, 1973, the Tenth Circuit affirmed the district court on both issues.

On September 28, 1973, on remand from TECA, the district court entered a judgment declaring the contract to be invalid on the ground that "it was not entered into by competent or authorized bargaining agents of Local 612, and this fact was known to plaintiff [AGC] . . . ." The AGC has appealed to the Tenth Circuit from the latter judgment. Such appeal is still pending.

ARGUMENT

1. Although petitioners declare that the decision of the Tenth Circuit "is repugnant to and in conflict with the decisions" of this Court (Petition, p. 11), they fail to point to a single case which supports their contention. Rather, as the opinions of the Tenth Circuit and the district court amply demonstrate, this Court's decision in *American Federation of Musicians* v. *Wittstein*, 379 U.S. 171, clearly supports the conclusion that in enacting Title I of the Labor-Management Reporting and Disclosure Act of 1959, Congress did not intend to impose proportional representation upon unions:

> . . . Section 101(a)(3)(B) is a part of Title I, entitled the 'Bill of Rights of Members of Labor Organizations.' This Title guarantees to every member of a labor organization equal rights and privileges to vote, to attend meetings, and to participate in the deliberations and business of such meetings. Section 101(a)(3)(B) forms a part of

> this framework by requiring participation by all members, either directly or through their elected representatives, on certain union matters thought to be of special importance. *We find nothing to indicate that Congress thought this objective would be better fulfilled by allowing a delegate to cast one vote, regardless of the size of his constituency, than by permitting him to cast a vote equal to the number of members he represents* . . . . Section 101(a)(3)(B), as well as Title IV, authorizes a representative system of government and does not require a town meeting for action by an international or national union. (Emphasis added.) (379 U.S. at 181-2.) [2]

Indeed, the Secretary of Labor, who is responsible for administering the election provisions of the Act, including § 401(e) which declares that "[e]ach [union] member in good standing shall be entitled to one vote," has expressly ruled upon this issue:

> When officers of a national, international or intermediate labor organization are elected at a convention of delegates who have been chosen by secret ballot, the structure of representation of the membership is a matter for the union to determine in accordance with its constitution and by-laws. There is no indication that Congress intended, in enacting Title IV of the Act, to require represen-

---

[2] The conclusion that the Congress did not seek to impose a form of reapportionment upon the labor movement by enacting § 101(a)(1) is supported by the position taken by then Solicitor General Archibald Cox in the "Memorandum for the United States as Amicus Curiae," filed in *Wittstein*. In that Memorandum, Solicitor General Cox, who had been a principal architect of the Act, declared that for "[w]hatever the reason, the fact is that there has been no history of abuse in the weighting of delegate votes and thus no reason for Congress to have limited union autonomy in that respect, or to anticipate that the power will be abused." (Memorandum for the United States as Amicus Curiae at p. 4.)

> tation in delegate bodies of labor organizations to reflect the proportionate number of members in each subordinate labor organization represented in such bodies. Questions of such proportionate representation are determined in accordance with the labor organization's constitution and bylaws insofar as they are not inconsistent with the election provisions of the Act. Congress did not attempt to specify the organizational structure or the system of representation which unions must adopt. However, all members must be represented; the union may not deny representation to locals below a certain size. [Labor Dept. Reg. § 452.127, 8 Fed. Reg. 18338.]

Respondents can state categorically that not only is there no decision of this Court, but also that there is no decision of *any* court, holding that Congress imposed weighted voting upon unions in the enactment of the Act. Under these circumstances, absolutely no basis exists for this Court to grant the Petition herein on the § 101(a)(1) issue.

2. The same situation obtains insofar as petitioners contend that the question concerning the validity of the trusteeship is certworthy. They cite no decision of this Court in point. Nor is there any conflict in the circuits on this issue.

Moreover, it is abundantly clear that the decision of the court of appeals sustaining the trusteeship is correct on the merits. Under § 302 of the Act, Congress has broadly set forth the purposes for which a labor organization may impose trusteeship over its subordinate affiliates. These reasons include "... assuring the performance of collective bargaining agreements or other duties of a bargaining representative, restoring democratic procedures, or otherwise carrying out

the legitimate objects of such labor organization." Respondents submit that the court of appeals correctly concluded that the trusteeship imposed upon Local 612 was for reasons which are well within the permissible purposes of §302.

First, the instant trusteeship is sustainable on the ground that Local 612's officers were no longer able to maintain democratic processes and procedures within the Local. This is clear from the testimony of petitioners Hodge, Hines and Marzette themselves. Hence, they admitted that they allowed an unlawful resolution to be adopted at a meeting of the Local and thereafter failed to prevent the negotiation by a rump-bargaining committee of an inferior contract on behalf of the Local's members. Such contract contained a minimal improvement in wages only, and did not provide for health, welfare and pension coverage for members of Local 612 and their dependents as was required by the International. In addition, the officers of Local 612 were aware that negotiations on behalf of the Local were required to be conducted by the Council, but they took no steps to prevent the purported negotiations from continuing. The existence of such a breakdown in internal union procedures has frequently been held to constitute a valid basis for imposing trusteeship.

With respect to the refusal of Local 612 to support and implement the policies of the International and the Council requiring health, welfare and pension plan coverage for all members of the International, and the Council's policy of equalizing wage rates of construction laborers throughout Oklahoma, such conduct constituted a failure of the Local to properly perform the "duties of a bargaining representative" and

"[carry] out the legitimate objects of such labor organization."

Insofar as the area of collective bargaining is concerned, Congress has left to internal union decision-making processes what will be the division of authority between parent unions and their subordinate affiliates. "[I]n the absence of specific legislation, it does not lie within the authority of a court to give effect to its general preference between international power and local autonomy in matters of collective bargaining." *Parks* v. *IBEW Local 23,* 314 F.2d 886, 906 (4th Cir.), *cert den.,* 372 U.S. 976. Hence, in the instant case the failure of Local 612 to negotiate highly beneficial health, welfare and pension plans into its agreement, thereby depriving its members and their families of essential benefits which have become available to almost all other members of the International, was in and of itself ground for sustaining the trusteeship.

CONCLUSION

For the reasons set forth herein, respondents pray that the Petition for Writ of Certiorari filed herein be denied.

Respectfully submitted,

ROBERT J. CONNERTON
ARTHUR M. SCHILLER
JULES BERNSTEIN
905 - 16th Street, N.W.
Washington, D. C. 20006

MAYNARD UNGERMAN
6th Floor, Wright Building
Tulsa, Oklahoma 74103

Counsel for Respondents

Certificate of Service

This is to certify that copies of the foregoing Brief In Opposition were served by airmail, postage prepaid, this 2nd day of August, 1974 upon the following:

C. W. SCHWOERKE, ESQ.
1017 Hightower Building
Oklahoma City, Oklahoma 73102

LESLIE L. CONNER, ESQ.
JAMES M. LITTLE, ESQ.
630 Hightower Building
Oklahoma City, Oklahoma 73102

JULES BERNSTEIN
Counsel for Respondents